



Australian Government

Defence Honours and Awards Appeals Tribunal

**REPORT OF THE REVIEW OF A DECISION BY
THE DEPARTMENT OF DEFENCE REGARDING RECOGNITION
FOR COMMISSIONED WARRANT OFFICER HERBERT SPENCER
ANDERSON (DECEASED)**

DECISION UNDER REVIEW

The decision of the Directorate of Honours and Awards of the Department of Defence made on 1 August 2007 that Commissioned Warrant Officer Herbert Spencer Anderson Royal Australian Navy Reserve (Seagoing) RANR(S) should not be recommended for an honour or an award.

DECISION OF THE TRIBUNAL

The Defence Honours and Awards Appeals Tribunal decided:

- not to recommend to the Minister that Commissioned Warrant Officer Herbert Spencer Anderson be considered for a Defence honour; and
- to recommend to the Minister that the decision of the Directorate of Honours and Awards of the Department of Defence not to recommend Commissioned Warrant Officer Herbert Spencer Anderson for an award be affirmed.

DATE OF DECISION

17 April 2013

THE TRIBUNAL

For the purpose of this appeal the Tribunal was constituted by:

Ms Christine Heazlewood (Presiding Member)
Air Commodore Mark Lax OAM, CSM (Retd)

REASONS FOR DECISION

Introduction

1. The Defence Honours and Awards Appeals Tribunal (the Tribunal) is established under the *Defence Act 1903*. Its functions are set out in s110UA of the Act. Those functions include to review a decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate) not to recommend a person or persons for a defence honour or award. The Tribunal conducts a merit review of the Directorate's decision and may make any recommendation to the Minister the Tribunal considers appropriate in relation to an honour. In relation to an award the Tribunal may affirm the Directorate's decision or set aside that decision and recommend the person or persons for the award, or refer the matter to another person as appropriate.

Declaration of Possible Conflict

2. Mr Anderson indicated at the hearing that he was considering lodging a submission with the Tribunal's Inquiry into *Unresolved recognition for past acts of naval and military gallantry and valour* to have his father recognised with the Victoria Cross. As Air Commodore Lax was also a panel member on that Inquiry, he indicated to Mr Anderson that he would step aside from hearing Commissioned Warrant Officer Herbert Spencer Anderson Royal Australian Navy Reserve (Seagoing) RANR(S) (CWO Anderson's) case if it was presented.¹

3. No other conflicts were declared.

Background to the Review

4. On 1 August 2007 the Directorate advised Mr Brian Anderson (Mr Anderson) that his late father CWO Anderson would not be recommended for recognition for an honour or award for his service during the midget submarine attack on Sydney Harbour on the night of 31 May/1 June 1942.

5. In 2008, Mr Anderson sought review by the Defence Honours and Awards Tribunal (the old Tribunal) of the Directorate's decision not to recommend his late father, CWO Anderson, for an honour or award for his service in 1942. During the course of the review Mr Anderson indicated that he would prefer that his father received an honour rather than award. In spite of this observation the old Tribunal considered, given the decision of the Directorate that it should review whether to recommend CWO Anderson for an award or an honour.

6. The old Tribunal reviewed the Directorate's decision and in November 2010 affirmed the original decision. Mr Anderson applied to the Federal Court for review of the decision of the old Tribunal. The application was settled on the basis Mr Anderson would make a new application to the Defence Honours and Awards Appeals Tribunal (the Tribunal) for review of the original decision and that the Tribunal would then conduct a *de novo* review in accordance with the *Defence Act 1903*, with new panel members.

¹ Mr Anderson subsequently provided a submission to the Tribunal as part of the *Inquiry into unresolved recognition for past acts of naval and military gallantry and valour*.

Conduct of the Review

7. The Tribunal wrote to Mr Anderson on 25 August 2011 and invited him to lodge a new application for review of the Directorate's decision. Mr Anderson provided an initial submission on 17 October 2011 and eight further submissions (including supporting documentation) between February and September 2012.²

8. As this is a review which includes an application for an honour, in accordance with the Tribunal's Procedural Rules 2011, an advertisement was placed in the public notices section of the *Canberra Times* on 28 June 2012 inviting members of the public to attend a public hearing on 5 July 2012. The Tribunal conducted the hearing on 5 July 2012.

9. In his submission of 9 July 2012 Mr Anderson addressed what he believed was a misunderstanding about his father's correct rank. The Tribunal accepts that CWO Anderson acted as a Commissioned Warrant Officer from the date of his enlistment. His rank was confirmed on 1 September 1944 and backdated to 15 September 1941. The further part of his submission relating to his father's actions on the night of 31 May 1942 reiterated Mr Anderson's earlier submissions.

Historical Background

10. On the night of 31 May/1 June 1942, CWO Anderson was in command of the Channel Patrol Boat HMAS *Lolita* on station in Sydney Harbour. On that night, three Japanese midget submarines entered the Harbour with the intention of destroying shipping. At anchor in the Harbour were the cruisers USS *Chicago* and HMAS *Canberra* as well as a number of other Australian and Allied naval assets. The submarine attack was generally considered unsuccessful.

11. The various archival references, Australian War Memorial documents and other sources use different nomenclature for each of the three midget submarines. For the purposes of this review, Table 1 lists the nomenclature.³ To avoid confusion, the Tribunal uses the term 'Midget 14' (Sub C) to further describe the submarine at the centre of CWO Anderson's action.

Japanese Mother Sub	Midget Sub Australian No.	Midget Sub Japanese No.	Crew
I-22	Sub B – M-22 or M-21	Ha-21	Matsuo & Tsuzuku
I-24	Sub A – M-24 or M-28	Ha-24	Ban & Ashibe
I-27	Sub C – M-27 or M-14	Ha-14	Chuma & Omori

Table 1 – Japanese Midget Submarine Nomenclature

12. Midget 14 was commanded by Lieutenant Kenshi Chuma (also referred to as Chuman). Midget 14 was caught in the Harbour's anti-submarine boom net and destroyed by its crew around 2235-2237 hours on 31 May 1942. The second submarine, Midget 24 (referred to in older documents as Midget A) moved further into the Harbour and launched an unsuccessful torpedo attack on the USS *Chicago*. While *Chicago* was not harmed, one of

² Mr Anderson submissions dated 28 February; 28 March; 22 and 26 May; 22 June; 9 July; 14 and 23 September 2012.

³ <http://ajrp.awm.gov.au/ajrp/ajrp2.nsf/pages/NT00011FEE?openDocument> accessed 7 July 2012.

Midget 24's torpedoes exploded below the depot ship HMAS *Kuttabul*, killing 21 ratings.⁴ Midget 24 escaped from the harbour only to sink off the Northern Beaches and its location was not discovered until 2006. The third submarine, Midget 21, was located at the bottom of Taylor Bay after she was harassed by the Channel Patrol Boats HMAS *Yarroma*, *Sea Mist* and *Steady Hour*. Her crew members were found to have been shot. The map at Appendix 1 shows the relative locations of the submarines and major allied shipping.

13. On the night of the attack, Rear Admiral Gerard Muirhead-Gould RN was the Naval Officer in Command of Sydney Harbour (NOCS) and was ultimately responsible for the harbour defences. Rear Admiral Muirhead-Gould had been appointed to that position in February 1940 and departed in September 1944. Much of what is recorded about events that night come from his report to the Australian Commonwealth Naval Board (the Naval Board), including a timeline partially reproduced at Appendix 2.⁵ It is the accuracy of this report that Mr Anderson disputes and he claims the Rear Admiral 'wrote his father out of history'.

14. On the night of 31 May 1942, HMAS *Lolita* commanded by CWO Anderson was guarding the Eastern Gate entrance to Sydney Harbour. At approximately 2220 another Channel Patrol Boat, HMAS *Yarroma* called *Lolita* over to investigate and report on a suspicious object caught in the anti-submarine net near the West Gate. *Lolita* closed and identified the object as a submarine. It is at this point that the record of what happened is in dispute.

Mr Anderson's Claims

15. Mr Anderson claims that *Lolita* 'immediately attacked the submarine and dropped two depth charges which failed to explode' and that the reason Midget 14 self-destructed was because of his father's quick action and that the Japanese 'knew the game was up'. Mr Anderson contends that his father played a much greater role in the defence of Sydney Harbour than was set out in the report of Rear Admiral Muirhead-Gould, and indeed as recorded by his father in his report of the incident. Mr Anderson stated that *Lolita* had on two occasions dropped depth charges on Midget 14 and after they had failed to explode, was preparing a third set adjusted to go off at a shallower depth. At this point, Lieutenant Chuma destroyed the submarine. Mr Anderson believes that *Lolita*'s initial attack led to Chuma electing to destroy the submarine and in doing so, also sink *Lolita*.

16. Mr Anderson argued that his father's actions on that night had a greater strategic impact on the defence of Sydney Harbour. In particular, Mr Anderson argues that Chuma's decision to destroy Midget 14 led to the element of surprise being taken away from the other two Japanese submarines involved in the attack, thereby saving many lives, essential allied shipping and other assets in and around Sydney Harbour.

17. Mr Anderson therefore contends that his father should have been recognised with an honour or award (other than his World War II medals) and that Defence has denied his father his deserved recognition. Mr Anderson is of the view that if the Tribunal accepts that CWO Anderson caused Chuma to destroy Midget 14, and that his father's actions were deliberately

⁴ G. Hermon Gill, *The Royal Australian Navy 1942-1945, Australia in the War of 1939- 1945*, Canberra: Australian War Memorial, 1968, p 70. This included 19 RAN ratings and 2 RN ratings.

⁵ NAA: Series SP338/1, Item 201/37 – (Japanese) Midget Submarine Attack on Sydney Harbour, May 31st June 1st 1942.

overlooked by Rear Admiral Muirhead-Gould and the Naval Board, that it is now right and proper to award some form of medallic recognition and preferably, the Victoria Cross.⁶

Department of Defence Position

18. On 17 November 2011 the Tribunal referred Mr Anderson's submission of 18 October 2011 to Defence. On 13 February 2012, Defence advised the Tribunal that it considered that Mr Anderson's submission did not offer anything new to change its position which had been previously stated in a submission dated 4 January 2010. Defence officials were present at the public hearing on 5 July 2012.

19. In their written and oral submissions, the Department of Defence accepted CWO Anderson's part in the Sydney Harbour attack, but put forward three arguments as to why CWO Anderson could not now receive an award for his service that night. These were:

- a. It is a long-standing policy of the Department not to consider retrospective awards for particular service during World War II;
- b. Since 1952, Her Majesty has stated she will no longer consider awards for WWII, and this was reaffirmed as recently as 1983. Reinforcing this policy is a Government decision in 1992 no longer to recommend Imperial Awards⁷; and
- c. No formal recommendation through the chain of command was ever raised by those in authority and best able to judge what happened that night.

20. Defence concluded that it would not be appropriate now to single out CWO Anderson 'at the expense of other former members whose actions were properly brought to the attention of the Naval Board, but not considered of sufficient weight to warrant medallic recognition'.⁸

The Documentary Evidence

21. In his submissions to the Tribunal, Mr Anderson provided a wide range of evidence relating to the attack on Sydney Harbour and other events. These included:

- Biographical information about his late father;
- Excerpts from books about the attack on Sydney Harbour and other matters;
- Draft and final official reports, signals and other documents about the attack on Sydney Harbour;
- His own research into Rear Admiral Muirhead-Gould, including official documentation and excerpts from books;
- Newspaper articles and photographs; and
- Television documentaries.

22. A number of the documents supplied by Mr Anderson in relation to Rear Admiral Muirhead-Gould's report appeared to be drafts of the report or incomplete copies. In his official report of that night dated 16 July 1942 Rear Admiral Muirhead-Gould said that he thought four midget submarines participated in the raid. He wrote that the first submarine

⁶ Mr Brian Anderson, Submission to the Defence Honours and Awards Appeals Tribunal, 7 October 2011, pp 11 & 29.

⁷ Letter to Her Majesty by Prime Minister Paul Keating dated 19 June 1992. Provided by Peter Rush, Assistant Secretary, Honours, Symbols and Territories branch, PM&C, to Chairman, DHAAT, 18 April 2012. The letter is initialled by Her Majesty as approved.

⁸ Defence Submission to the Defence Honours and Awards Appeals Tribunal, 4 January 2010, paragraph 16.

(Midget 14) crossed the loop at 2001 and by 2015 was caught in the net. The submarine was unable to free itself and blew itself up at 2235.⁹

23. According to Rear Admiral Muirhead-Gould's report the second submarine (Midget 24 – Sub A in the report) entered the harbour at 2143 unobserved and crossed the loop at 2148. It was sighted at 2252. After being fired on by USS *Chicago*, Midget 24 turned and was fired on by HMAS *Whyalla* and HMAS *Geelong*. Midget 24 then fired two torpedoes at 0030 presumably at *Chicago*, one of which exploded under *Kuttabul* sinking it. Midget 24 then escaped the harbour at 0158.¹⁰

24. The report recorded that the third submarine (Midget 21 - Sub B in the Report), made an unsuccessful attempt to enter the harbour, was sighted by a number of vessels and fired upon. The submarine was attacked and eventually sunk at 0827. Subsequent examination of this vessel revealed that both crew had been shot through the head. Rear Admiral Muirhead-Gould thought a fourth submarine entered the harbour at 0301, but this was in fact Midget 21.¹¹

25. A chronology of events was attached to the report, part of which is set out at Appendix 2. The chronology noted that the first submarine (Midget 14) was first sighted by a watchman (Mr James Cargill) at 2015. He had noted that a suspicious object had been caught in the nets. The watchman and his mate (Mr William Nangle) rowed out to the object and then reported to HMAS *Yarroma* at 2130 that there was a suspicious object in the net. At 2152 *Yarroma* reported a suspicious object in the net and was ordered to investigate.¹² A stoker from *Yarroma* was sent out and *Lolita* closed on *Yarroma*. At 2227 a general message from NOCS was sent to all ships to: 'take A/S [anti-submarine] precautions'. At 2230 *Yarroma* reported that the object was a submarine and at 2235 *Yarroma* reported that the submarine had blown up.¹³

26. Appendix VI of Rear Admiral Muirhead-Gould's report sets out the recommendations for recognition of personnel. The results of those recommendations are set out below (see paragraphs 36 and 37). The actions described by the Rear Admiral as deserving recognition included searching the HMAS *Kuttabul* for men who may have been trapped which involved wading in deep water in hazardous conditions and diving into the water at night searching for survivors. A further action by members described in the report was the removal of 'pistols and primers from torpedoes, and demolition charges from submarines'.¹⁴

Eye Witness Reports

27. Mr Nelson, a crewmember of HMAS *Lolita*, was interviewed by amateur historian Mr Steven Carruthers in the early 1980s while gathering evidence for his books. The transcription of that interview was provided to the Tribunal by Mr Anderson. In the interview, Mr Nelson recalled that the watchman had rowed to the *Lolita* and told them that there was an object caught in the net. The *Lolita* immediately investigated and saw that the

⁹ NAA: MP 1049/5, 2026/21/79 – Midget Submarine Attack on Sydney Harbour. Muirhead-Gould's Report to the Naval Board, 16 July 1942, paragraph 14.

¹⁰ *Ibid*, paras 15-19.

¹¹ *Ibid*. paras 20-22 and 23-25.

¹² *Ibid*, Appendix 1 - Chronological Narrative. It should be noted that up to this time, the information had been collated from the Maritime Services Board Report, and not calculated by Muirhead-Gould or his staff.

¹³ *Ibid*.

¹⁴ *Ibid*, Appendix VI.

object was a submarine. CWO Anderson decided to attack immediately and dropped a set of depth charges which failed to explode. He sent a message to the South Head Station indicating that he was attacking a submarine. A second set of depth charges also failed to explode because they had been set to explode at a greater depth. Before the *Lolita* could drop the third set which they had tried to modify, the submarine blew itself up. In Mr Nelson's opinion, CWO Anderson had put the *Lolita* in danger when he had attacked the submarine because the submarine had tried to destroy *Lolita* when it blew itself up.

28. The copy reports written by CWO Anderson, and included by Mr Anderson in his submission, were drafts and included an incomplete official report. CWO Anderson's record of service revealed that he was highly thought of by his superiors and considered utterly reliable. In his draft report, CWO Anderson wrote that he received a message from *Yarroma* about 2220 to come over, which he immediately did. He was told there was a suspicious object in the net which he was ordered to investigate. He immediately proceeded to the object and identified it as a submarine which was struggling to free itself. CWO Anderson realised that he needed to take immediate action, so he prepared to drop depth charges. Before he could, the submarine exploded. He signalled what had happened and reported back to *Yarroma*.

29. Mr Anderson also provided copies of reports prepared by other officers who were present on the night. Executive Officer Ketchum of the USS *Perkins* advised in his report that at 2245 a warning was received that enemy submarines may be in the harbour. He then went on to describe the action that took place in the following four to five hours. The Commander of *Perkins* prepared a similar report. Reports of the events on that night were quite critical of the level of preparedness for the defence of Sydney Harbour.

Evidence at the Hearing

30. Mr Anderson told the hearing that Rear Admiral Muirhead-Gould had deliberately written his report so that CWO Anderson would receive no credit for the actions he had taken. According to Mr Anderson, Rear Admiral Muirhead-Gould and his father argued about what had happened when the Rear Admiral boarded the *Lolita* about midnight on 31 May 1942. Mr Anderson claims that to cover his incompetence, Rear Admiral Muirhead-Gould did not refer to the action taken by *Lolita*. Mr Anderson's account of what happened that night is based on what his father told him and the extensive research he has undertaken.

31. Mr Anderson accepted that the Mr Cargill was the first person to notice the object in the net at about 2015. He said that Mr Cargill reported his suspicions to *Yarroma* at 2130. *Yarroma* reported these suspicions and was ordered to investigate. *Yarroma* called *Lolita* over at 2220 and directed CWO Anderson to investigate the suspicious object in the net. *Lolita* immediately proceeded to the suspicious object, recognised that it was a submarine and then attacked it twice with depth charges. Before CWO Anderson could drop a third set of depth charges the submarine exploded. This occurred about 2237 and *Lolita* immediately reported this fact to the Port War Signal Station and then to *Yarroma*.

32. Mr Anderson called a witness, Mr Steven Carruthers. Mr Carruthers told the Tribunal that he is an amateur historian who has written two books on Australia's war time history in 1942 and 1943. Whilst gathering evidence for his books, Mr Carruthers interviewed Mr Nelson. Mr Carruthers was inclined to believe Mr Nelson's account of what happened. He acknowledged that CWO Anderson did not mention the depth charges in his report but he thought this might have been because he was trying to be brief. It was generally

acknowledged that the reports prepared immediately after the attack were inadequate and inaccurate. It was also unfortunate that many documents had been lost.

33. Mr Carruthers supported Mr Anderson's claim for the following reasons. CWO Anderson put *Lolita* in the line of fire to do his duty. Midget 14 had been in the net for over two hours before the *Lolita* approached. It had kept quiet so that the other two submarines might still launch a surprise attack. Midget 14 only blew itself up because it had been discovered and Chuma hoped that he might be able to destroy *Lolita* as well. If *Lolita* had not forced the submarine to destroy itself, far more damage could have been caused that night. Mr Carruthers thought that no-one received recognition for their actions on that night because the Navy had been embarrassed by the attack.

34. Naval historian, Dr David Stevens, the Director of Strategic Historical Studies at the Sea Power Centre - Australia gave evidence for Defence. He pointed out that 'CWO Anderson was not forgotten' and that all the documents that Mr Anderson had discovered had been added to the naval historical record. Future historians would be able to include and acknowledge the role of CWO Anderson and *Lolita* in the defence of Sydney Harbour. Dr Stevens also advised Mr Anderson that if he wished to submit information regarding the attack on Sydney Harbour for inclusion on websites controlled by Defence relating to these events, or if there was information on these websites which Mr Anderson believed was incorrect, that he could approach the Naval History Section at the Sea Power Centre - Australia with information for their consideration.

Awards Made for the Sydney Harbour Attack

35. At Appendix VI to his report to the Naval Board, Rear Admiral Muirhead-Gould listed a series of recommendations for various personnel. The list is 'recommended to the notice of the Naval Board for their display of zeal and determination throughout the operation'. No formal recommendations were raised on the appropriate form to progress honours or awards or formal commendations. Consequently, no servicemen received an award for action that night, but two civilians, Mr Cargill and Mr Nangle, received a monetary reward for their services.

36. The Naval Board's response to Rear Admiral Muirhead-Gould's recommendations directed that notations be made on the records of the officers and ratings mentioned in the report. In addition, the Naval Board requested that congratulations be passed on to the crews of the Channel Patrol Boats *Steady Hour*, *Sea Mist* and *Yandra* as well as the skipper and crew of the Naval Auxiliary Patrol Boat *Lauriana* for their efficient work, and to the Captain and crew of HMAS *Yarroma* for their part in the sinking of Midget 21.¹⁵ CWO Anderson was not listed on any correspondence for consideration by the authorities for an honour or award or for noting on his personal record.

The Awards Process

37. After the outbreak of war with Japan in December 1941 some Australian ships operated in the Australia Station (a defined area around Australia including Sydney Harbour), and served under the command of the Naval Board. When the Allied South-West Pacific Area was formed in April 1942, all the Australian vessels in the Australia Station were assigned to the Commander Allied Naval Forces (an American admiral). But for matters of

¹⁵ NAA MP1049/5, item 2026/21/79. Letter 2026/21/22 of 3 October 1942, Secretary, Naval Board to Naval Officer in Charge Sydney, Midget Submarine Attack on Sydney Harbour,

administration, including the recommendation of decorations, naval vessels remained under the command of the Naval Board.

38. Mr Anderson was advised of the honours and awards process during the hearing. The Royal Navy believed it was important that all recommendations for Commonwealth navy honours be submitted to the British Admiralty to 'ensure uniformity of standard of awards'.¹⁶ The Naval Board agreed. Thus, for an honour or award to be considered, the member first had to be nominated by their commanding officer or chief of staff who would write up an appropriate citation. The recommendation would be sent to the Officer in Charge, in this case Rear Admiral Muirhead-Gould. If the OIC was satisfied, the recommendation would be formally submitted to the Secretary of the Australian Department of the Navy, and then after agreement by the Naval Board, sent direct to the Admiralty. Successful awards were published in the London Gazette after which they became official.

Consideration by the Tribunal and Findings

39. At the hearing, the Presiding Member advised Mr Anderson that the review would only consider the lack of recognition for CWO Anderson and not look at any other matters that he had raised in his various submissions. Mr Anderson was advised that the Tribunal was unable to rewrite history, alter the archival records or make any judgement about Rear Admiral Muirhead-Gould's character, performance or behaviour on the night in question.

40. The Tribunal accepts that CWO Anderson played an important role in the defence of Sydney Harbour on the night of 31 May/1 June 1942 and this is not in contention. CWO Anderson's contemporaneous report and the later account by Mr Nelson set out the events surrounding the actions of *Lolita* on the night of 31 May 1942 in particular. Rear Admiral Muirhead-Gould's report was clearly inaccurate which was understandable given the circumstances. His report on 22 June 1942 was written shortly after the attack when the facts were still not clear. His was the first of a number of reports over the years that gradually clarified what had happened on that night. The reports of other officers do not refer to the early events that *Lolita* was involved with, but do indicate the confusion on that night. Unfortunately the report of the Commanding Officer of *Yarroma* could not be located. It appears that many reports have been lost.

41. The Tribunal finds that CWO Anderson was the Commanding Officer of *Lolita* on the night of 31 May 1942 when Sydney Harbour was attacked by three Japanese midget submarines. Midget 14 entered Sydney Harbour around 2000 and shortly afterward became entangled in the defence net. Around 2015 Mr Cargill, a watchman spied a suspicious object in the net. He collected his mate Mr Nangle and rowed out to the object. He thought it might be dangerous and about 2130 he reported his suspicions to the Commanding Officer of *Yarroma*. The Commanding Officer of the *Yarroma* reported these suspicions to the Port War Signal Station and was ordered to investigate. A general warning was broadcast at 2227. Around 2220 the Commanding Officer of *Yarroma* called *Lolita* over and ordered it to investigate. *Lolita* approached the object in the net and realised it was a submarine. CWO Anderson sent a message to the Port War Signal Station and decided to attack the submarine with depth charges. Before he could drop the third set of depth charges the submarine blew itself up. CWO Anderson put himself and *Lolita* in danger when he attacked the submarine and his actions possibly led to Midget 14 destroying itself.

¹⁶ Cable 427, Secretary of State for Dominion Affairs to Australia, 21 May 1942, NAA: A703, 138.

42. In relation to the other actions taken by members of the Services on the night of 31 May/1 June 1942 the Tribunal finds that Commanding Officers of a number of Patrol Boats put themselves and their crews and vessels in danger by attacking the remaining two submarines. Other members waded through treacherous deep water and dived into that water in the dark in an effort to save men who were on the *Kuttabul* when it was torpedoed, putting themselves in danger. Several members disarmed torpedoes and charges on the third submarine putting their lives at risk.

Recognition for CWO Anderson

43. The Tribunal noted that CWO Anderson had previously been recognised in the following manner:

- a. Member for Port Adelaide, Mr Mark Butler's address to the House of Representatives on 7 September 2009 specifically recognises CWO Anderson's role in the Sydney Harbour attack.¹⁷
- b. CWO Anderson is mentioned in the Australian Official History by G. Hermon Gill;¹⁸ and
- c. Files and records held at the Sea Power Centre - Australia.

44. Mr Anderson has urged the Tribunal to recommend that his father, CWO Anderson, be recognised for his heroic actions on the night of 31 May 1942 as well. The Tribunal has found that CWO Anderson as the Commander of *Lolita* performed the actions his son outlined in his submission to the Tribunal. The issue for the Tribunal is whether those actions warrant a recommendation for an honour or award.

45. The Department of Defence argued that CWO Anderson should not be recommended for an honour or award. In support of its submission, Defence referred to its policy on retrospectivity as it applied to recognising particular service in World War II. It also referred to the fact that in spite of Rear Admiral Muirhead-Gould's recommendation to the Naval Board, the Board decided not to recommend that any person be recognised for their actions. Therefore it would be inappropriate to single out CWO Anderson for recognition of the action he took on that night.

46. The Tribunal also notes that a certain procedure was prescribed for recognising the actions of individuals during World War II. Those procedures were not commenced in relation to any person's actions on the night of 31 May/1 June 1942.

47. Mr Anderson argued that the Tribunal should consider his father's actions in the context of what happened later that night and the impact of the Japanese attack on Sydney Harbour on Australia's relationship with the United States. Mr Anderson said that as a result of his father's action the Harbour was alerted to the imminent attack by the two other midget submarines. This meant that all ships were on alert for the subsequent attacks and were able to contain the damage. Mr Anderson argued that the attack on Sydney Harbour affected Australia's relationship with its major ally, the United States of America. If the attack had been successful and US ships had been damaged or sunk, the United States might have withdrawn from Australia and this would have had significant implications for Australia. This was why he believed his father's actions above all other brave actions taken on that

¹⁷ CPD H of R p 93.

¹⁸ Gill, *The Royal Australian Navy 1942-1945*, p 67.

night, deserved recognition. According to Mr Anderson, to compare his father's bravery with the bravery of others on that night was like comparing 'apples to oranges'.

48. The Tribunal cannot accept Mr Anderson's argument that his father's actions alone lead to the containment of the attack on Sydney Harbour. The argument overlooks the significant contribution of Mr Cargill, the watchman and the action taken by many others. It was Mr Cargill who alerted the *Yarroma* who alerted the Port War Signal Station. *Yarroma* ordered *Lolita* to investigate and this resulted in a general warning to all ships in the Harbour. That is, *Lolita's* role was part of a sequence of events that resulted in the general warning. This is not to say that *Lolita's* role was not important, but rather that a number of persons contributed to the successful defence of Sydney Harbour that night.

49. The Tribunal is not able to say why CWO Anderson and *Lolita* were not included in Rear Admiral Muirhead-Gould's report and thus why *Lolita* and its crew were not recommended for recognition. However it is clear to the Tribunal that the actions of CWO Anderson were equivalent to the actions taken by the commanders of other Patrol Boats on that night. His actions were brave and he put his life and the lives of his crew in danger, but so did the commanders of the other Patrol Boats. The members who assisted in retrieving the survivors of *Kuttabul* and who disarmed the torpedoes and explosives were also brave and put their lives at risk.

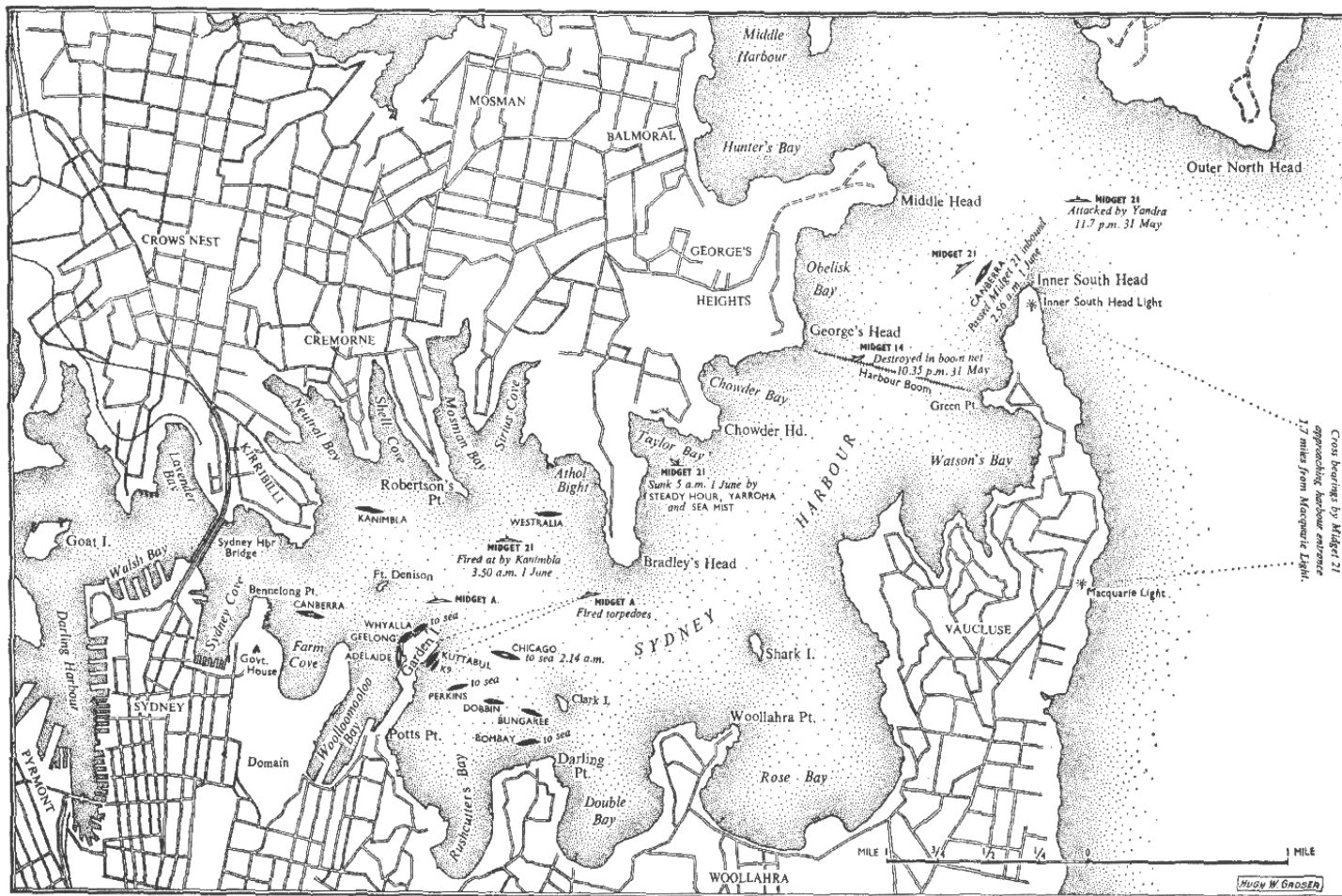
50. Individuals who acted bravely and put their lives at risk defending Sydney Harbour on 31 May/1 June 1942 were considered for recognition by the Naval Board. The Naval Board decided that nobody should be recognised for their actions on that night despite the recommendation of Rear Admiral Muirhead-Gould. No reasons were given for that decision and it is not appropriate for this Tribunal to speculate on what those reasons might have been. The Tribunal accepts that the Naval Board considered the actions taken and decided that in the circumstances of mid-1942 it was not appropriate to recognise any individual act. For this reason the Tribunal has decided that it is not appropriate to recommend that CWO Anderson be recognised for the deeds he undertook on the night of 31 May 1942. His deeds were equivalent to the brave actions taken by others on that night who also were not recognised.

51. Given the above conclusion it is not necessary for this Tribunal to decide whether particular service in World War II should be recognised retrospectively. Nor is it necessary for the Tribunal to decide whether a person's service can be recognised even though the proper procedures for recognition have not been followed. The Tribunal has decided on the facts that CWO Anderson should not be recommended for an award and that it should not recommend to the Minister that CWO Anderson be considered for an honour.

DECISION OF THE TRIBUNAL

52. The Defence Honours and Awards Appeals Tribunal decided:

- not to recommend to the Minister that Commissioned Warrant Officer Herbert Spencer Anderson be considered for a defence honour; and
- to recommend to the Minister that the decision of the Directorate of Honours and Awards of the Department of Defence not to recommend Commissioned Warrant Officer Herbert Spencer Anderson for an award be affirmed.



Map 1 – Sydney Harbour shipping – Night of 31 May/1 June 1942

Source: Gill, *The Royal Australian Navy 1942-1945*, p 69.

Rear Admiral Muirhead-Gould's Report – Timeline 2000-0030 hrs

The following chronology of events relating to Midget 14 and *Lolita* has been extracted from the 16 July 1942 report of Rear Admiral Muirhead-Gould.¹⁹

Time	Event
2000	Recorded crossing on No. 12 Loop Midget 14.
2015 (approx)	Watchman sighted suspicious object in nets near Sheerlegs – Western Channel. Watchman and mate proceeded in skiff to investigate.
2130 (approx)	Watchman proceeded to “YARROMA” and reported suspicious object. (“YARROMA” was duty Channel Patrol Boat at West Gate.) “YARROMA” would not approach owing to fear that object was a magnetic mine.
2148	Recorded crossing on No. 12 Loop.
2152	“YARROMA” reported “suspicious object in net” and was told to give full description.
2210	“YARROMA” reported object was metal with serrated edge on top, moving with the swell. “YARROMA” was ordered to give fuller description.
2220 (approx)	Stoker from “YARROMA” sent in Maritime Services Board skiff to investigate and reported object as submarine. “LOLITA” closed “YARROMA”. Captain Bode, “CHICAGO”, left TRESKO with suggestion that he should go to sea with “PERKINS”.
2227	N.O.C.S. to All Ships, Sydney, “Take A/S precautions.” Port closed to outward shipping.
2230	Watchman sent back to work. “YARROMA” reported – “Object is submarine. Request permission to open fire.” “GOONAMBEE” ordered to proceed forthwith to investigate object at West Gate. 2 nd Duty Staff Officer proceeded to Channel Patrol Boats not duty. (“GOONAMBEE” was duty M/S Vessel in Watsons Bay).
2235	“YARROMA” reported submarine had blown up.
2236	N.O.C.S. to GENERAL – “Presence of enemy submarine at boom gate is suspected. Ships are to take action against attack.”
0000	Rear Admiral and Chief Staff Officer boarded “LOLITA”.

¹⁹ Muirhead-Gould Report, Appendix 1.